

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.240 of 2015
and M.P.No.1 of 2015

T.Govindasamy .. Appellant/Defendant

Vs.

Sridhar .. Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.14 of 2013 dated 28.03.2014 on the file of the learned Subordinate Judge, Madurantagam, which confirmed the judgment and decree in O.S.No.248 of 2006 dated 23.03.2011 on the file of the learned District Munsif at Madurantagam.

For Appellant : Mr.P.Bakiyaraj,

For Respondent : Mr.P.G.Padmanabhan

JUDGMENT

Aggrieved by the concurrent findings of the Courts below, the defendant has preferred the above Second Appeal in a suit for specific performance.

2. The suit was filed based on Ex.A-1-Sale Agreement dated 29.07.2006, as per which, the appellant /defendant had agreed to sell the suit schedule property to the plaintiff for a sum of Rs.50,000/- and received a sum of Rs.10,000/- as an advance on the same day. The plaintiff agreed to pay the balance sum of Rs.40,000/- at the time of registration of the document. Despite several attempts made by the plaintiff to pay the balance amount and the sale executed, the defendant had not come forward to perform his part of contract. Hence, the suit was filed.

3. The suit was resisted by the defendant contending that the agreement executed is in executable and the possession of the property is that of the defendant. It is also stated that there are other sharers to the property and the sale consideration fixed at Rs.800/- per cent is false, as the value

of the property is Rs.2,000/- per cent.

4. Before the trial Court, the plaintiff himself examined as P.W.1 and marked Exs.A1 to A5 and the defendant himself examined as D.W.1 and no documents were marked.

5. After considering the oral and documentary evidence, the Courts below had concurrently held that the plaintiff is entitled to the equitable relief of specific performance. Being aggrieved against the same, the defendant has filed the above Second Appeal.

6. The first contention of the learned counsel for the appellant / defendant is that Ex.A-1 was obtained from him by misrepresenting the consideration fixed. According to the appellant/defendant, the value of the property is Rs.2,000/- per cent, but it was fixed at Rs.8,000/- per cent. When the execution of the document is not disputed, it is not open to the defendant to contend that the signature were obtained from him by misrepresentation. It is also to be noted that the defendant had also not produced any document showing the value of the property as on date of the execution of Ex.A-1. In fact, the defendant had admitted in his evidence that Ex.A-1 was typed by the plaintiff and brought to him, wherein, he had signed it, after reading the same. It is further admitted that his wife and daughter were signed all the documents, who were also signed as witnesses. Ad admitted, the appellant /defendant is an educated person, he could read the document and then signed the same and if it is not agreeable for him, he should not have signed or he could have refused to sign the agreement. Hence, the Courts below have rightly held that the plaintiff had not misrepresented the value of the property and the defendant had signed it with full knowledge about the same.

7. So far as the question of readiness and willingness of the plaintiff is concerned, the plaintiff is ready and willing to pay the balance of Rs.40,000/- and the defendant had refused to co-operate, he had to issue a legal notice on 24.08.2006, which is marked as Ex.A-2. Even in Ex.A-2, the plaintiff had stated that he has been ready and willing to pay the balance of the sale consideration and to perform his part of the contract. Though there is hard and fast rule of determining the readiness and willingness of the party, it could be inferred from the conduct of the parties. In this case, the defendant was not ready and willing to perform his part of the contract. Therefore, it is held that the plaintiff was ready and willing to perform his part of the contract.

8. The next contention of the appellant is that the property was jointly owned by others. In the written statement filed by him, he has only stated that there are other sharers to the suit property. Excepting the single statement, nothing else has been stated in the written statement nor in his evidence. There is absolutely no mention in the appeal as to how the other sharers are entitled to the same. In the absence of any pleading or proving the same, the contention of the appellant is rejected. The suit itself is filed for delivery of possession after executing the sale deed. It is presumed that the possession is still with the defendant. The Courts below have given a clear and categorical finding in each of the aspect before granting the equitable relief of specific performance and this Courts finds no reason to interfere with the concurrent findings. In the available pleadings, there is no question of law, much less, substantial question of law arising for consideration in this Second appeal.

9. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

srn
To

1. The Subordinate Judge, Madurantagam,
2. The District Munsif at Madurantagam.

+1cc to Mr.P.BACKIYARAJ, Advocate, S.R.No.18543
+2cc to Mr.P.G.PADMANABHAN, Advocate, S.R.No. 17706

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CA(CO)
TR(10/04/2018)

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